

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

WAYNE ROBINSON,

Plaintiff,

v.

Civil Action No. 3:08cv79

**R. UHLES, Chaplain,
TODD UNDERWOOD, Discipline Hearing Officer,**

Defendants.

ORDER

It will be recalled that on September 19, 2008, Magistrate Judge Seibert filed his Report and Recommendation, wherein the Plaintiff was directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. Plaintiff filed his objections on September 29, 2008.

Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues raised by the Plaintiff in his Complaint, brought pursuant to Bivens v. Six Unknown Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971), wherein Plaintiff challenges a disciplinary proceeding that resulted in loss of good conduct time and seeks monetary damages, were thoroughly considered by Magistrate Judge Seibert in his Report and Recommendation. Upon review of the Plaintiff's objections, it appears that the Plaintiff is seeking a dismissal without prejudice rather than with prejudice. The Court notes that the Magistrate's Report and Recommendation does not recommend a dismissal with prejudice. The Court would further note that a dismissal without prejudice does not create a waiver of the filing fee should the Plaintiff choose to file a

similar civil action at a later date. The Court finds that the Plaintiff has not raised any issues that were not already thoroughly considered and addressed by the Magistrate Judge in his Report and Recommendation. Moreover, the Court, upon an independent de novo consideration of all matters now before it, is of the opinion that the Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action. Therefore, it is

ORDERED that Magistrate Judge Seibert's Report and Recommendation be, and the same hereby is, accepted in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that the Plaintiff's Complaint shall be, and the same hereby is, **DISMISSED** pursuant to 28 U.S.C. §§1915A(b) and 1915(e) for failure to state a claim. It is further

ORDERED that the Clerk shall enter judgment for the Defendants. It is further

ORDERED that Plaintiff's Motion for Defendants to be Served (docket #9) and for Preliminary Injunction (Docket #10) shall be, and the same hereby are, **DENIED** as moot. It is further

ORDERED that the above-styled civil action shall be **STRICKEN** from the docket of this Court. It is further

ORDERED that, if Plaintiff should desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and

the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, Plaintiff may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed in forma pauperis from the United States Court of Appeals for the Fourth Circuit.

The Clerk of the Court is directed to transmit a copy of this Order to all parties appearing herein.

ENTER: February 5th, 2009

/s/ Robert E. Maxwell
United States District Judge